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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/762,642

01/20/2004

Mark Horton

30,800-00US

5319

7590

12/01/2006

John F. Klos, Esq.  
Fulbright & Jaworski L.L.P.  
Suite 2100  
80 South Eighth Street  
Minneapolis, MN 55402-2112

EXAMINER

PRONE, JASON D

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/762,642

Applicant(s)

HORTON, MARK

Examiner

Jason Prone

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cronheim (3,711,945) in view of Scheminger (5,555,625) with further evidence patents McGuyer (D509,114) and Garret (874,583). Cronheim discloses the invention including a cutting wheel (31), a handle (1) having a finger stop (19), a generally planar top surface extending along a length of the handle and capable of engaging an extended index finger (2), a pair of side surfaces extending between the top and bottom surfaces (6, 6'), the side surfaces are wider than the top surface (Fig. 6), a neck portion coupled to the cutting wheel and extending from a first end of the handle (34), the neck portion has a length greater than or equal to a diameter of the cutting wheel (34), and the handle is formed of wood (Column 1 lines 61-62).

However, Cronheim fails to disclose the neck portion arcuately extends from the first end of the handle.

Schmeniger teaches that it is old and well known in the art of wheel cutters to incorporate an arcuate neck portion (18 or 20). McGuyer and Garret provide further evidence that arcuate neck portions are old and well known in the art of wheel cutters. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of

the invention, to have provided Cronheim with an arcuate neck portion, as taught by Scheminger, as an alternate way of extending the neck towards the cutter wheel. The angled neck portion performs the exact same function as an arcuate neck portion.

3. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cronheim in view of Scheminger as applied to claim 1 above, and further in view of Stowell et al. (RE37,190). Cronheim in view of Scheminger disclose the invention including the finger stop is an elongate pad extending along a top surface of the handle (19 in Cronheim).

However, Cronheim in view of Scheminger fail to disclose the finger stop is made of rubber.

Stowell et al. teaches it is old and well known in the art of finger pads on handle held tools to incorporate a finger stop made of rubber (18A). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Cronheim in view of Scheminger with a stop made from rubber, as taught by Stowell et al., to better prevent the user's hand from slipping while in use.

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cronheim in view of Scheminger as applied to claim 1 above, and further in view of Arend et al. (6,044,565). Cronheim in view of Scheminger disclose the invention however, Cronheim remains silent on the specific dimensions of the cutting apparatus and, therefore, fails to disclose, the ratio of the length of the handle to a diameter of the wheel is approximately 3 to 1, the length of the handle is approximately 6 inches, the

diameter of the cutting wheel is approximately 2 to 3 inches, and the handle is formed of plastic.

It is noted that the term "approximate" means very similar (The American Heritage® Dictionary of the English Language, Fourth Edition, Copyright © 2000 by Houghton Mifflin Company. Published by Houghton Mifflin Company. All rights reserved). In light of this definition, Arend et al. teaches, in regards to claim 4, the ratio of the length of the handle to a diameter of the wheel is approximately 3 to 1 (6.25 and 1.75 is approximately a 3 to 1 ratio, Column 3 lines 7-23). In regards to claims 6-8, Arend et al. teaches the length of the handle is approximately 6 inches (Column 3 line 10, 6.25 inches is approximately 6 inches). In regards to claim 9, Arend et al. teaches the diameter of the cutting wheel is approximately 2 to 3 inches (Column 3 line 13, 1.75 inches is approximately 2 inches). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Cronheim in view of Scheminger with specific dimensions/ratios, as taught by Arend et al., to allow the apparatus to best conform to an average user's hand.

5. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb (5,569,285) in view of Garret and Cronheim further in view of Stowell et al. Webb discloses the invention including, in regards to claim 12, a cutting wheel (10), a handle made of a first material and having a top surface along a first end adapted to engage a longitudinally extended index finger (7), the handle having a pair of generally planar side surfaces and a generally planar bottom surface (Fig. 1), the side surfaces being wider than the top surface so that the cross-section is generally rectangular (13), a neck extending from the first end of the handle (Fig. 1), and the length of the neck is greater than twice the diameter of the cutting wheel (Fig. 1).

However, Webb fails to disclose a finger stop structure connected to the top surface along a first end and positioned to be capable of confronting the tip of an index finger, the finger stop is made of a slip-resistant material, and the neck extends arcuately from the handle.

Cronheim teaches that it is old and well known in the art of cutting wheel handles to incorporate a finger stop structure connected to the top surface along a first end and positioned to be capable of confronting the tip of an index finger (19). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Webb with a finger stop, as taught by Cronheim, to make the handle more ergonomically pleasing.

Stowell et al. teaches that it is old and well known in the art of tool handles to incorporate a finger stop that is made of a slip-resistant material (19). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Webb in view of Cronheim with a stop made from a non-slip material, as taught by Stowell et al., to prevent the user's hand from slipping while in use.

Garret teaches that it is old and well known in the art of cutter wheel to incorporate an arcuate neck portion (4<sup>a</sup>). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Webb with an arcuate neck portion, as taught by Garret, to make it easier for the user to apply a downward force to the cutting wheel.

6. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb in view of Garret and Cronheim further in view of Stowell et al. as applied to claim

12 above, and further in view of Arend et al. Webb in view of Garret and Cronheim further in view of Stowell et al. disclose the invention however, Webb remains silent on the specific dimensions of the cutting apparatus and, therefore, fails to disclose, the ratio of the length of the handle to a diameter of the wheel is approximately 3 to 1 and the diameter of the cutting wheel is approximately 2 to 3 inches.

It is noted that the term "approximate" means very similar (The American Heritage® Dictionary of the English Language, Fourth Edition, Copyright © 2000 by Houghton Mifflin Company. Published by Houghton Mifflin Company. All rights reserved). In light of this definition, Arend et al. teaches, in regards to claim 15, the ratio of the length of the handle to a diameter of the wheel is approximately 3 to 1 (6.25 and 1.75 is approximately a 3 to 1 ratio, Column 3 lines 7-23). In regards to claim 14 and 16, Arend et al. teaches the diameter of the cutting wheel is approximately 2 to 3 inches (Column 3 line 13, 1.75 inches is approximately 2 inches). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Webb in view of Garret and Cronheim further in view of Stowell et al. with specific dimensions/ratios, as taught by Arend et al., to allow the apparatus to best conform to an average user's hand.

7. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cronheim in view of Arend et al. with evidence reference Whitemiller et al. (2005/0022390). In regards to claim 17, Cronheim discloses the invention including providing a cutting device having a cutting wheel (31) and a handle (1), a finger stop (19), the handle having a first end and a top surface adapted to engage an index finger (2), the handle including a pair of generally planar side surfaces extending between the top and bottom surfaces (6 and 6'), the side surfaces being wider than the top surface

(Fig. 6), placing a finger along the top with a finger tip engaging the finger stop (19) grasping the handle of the cutting device with one end of the cutting device being held entirely within the palm of the user's hand and one surface of the handle engaging a substantial portion of the user's index finger (1), and a tip of the index finger engaging the finger stop (19) and rolling the cutting wheel across a flat food item to cut the item (Title). Whitemiller et al. provides evidence that it is old and well known in the art of handles with finger stops to engage a thumb or a fingertip with the stop (lines 4-6 or [0028]).

However, Cronheim fails to disclose the handle having a length of between 4.5 and 7 inches.

Arend et al. teaches that it is old and well known in the art of wheel cutter handles to incorporate handle having a length of between 4.5 and 7 inches (Column 3 lines 7-11). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Cronheim with specific dimensions, as taught by Arend et al., to allow the apparatus to best conform to an average user's hand.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-4, 6-10, and 12-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Heckroth and Law.



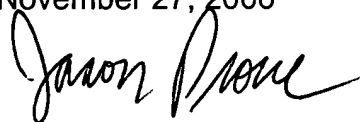
Art Unit: 3724

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:00-4:30, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-450202. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 27, 2006

A handwritten signature in black ink, appearing to read "Jason Prone", written in a cursive style.

Patent Examiner  
Jason Prone  
Art Unit 3724  
T.C. 3700